GELOMBANG SEPADU SDN BHD

v.

TAL SENG ENTERPRISE SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[CIVIL SUIT NO: S2-23-422-1995]
15 JUNE 1998

CIVIL PROCEDURE: *Costs - Taxation - Whether excessive - Whether court could interfere with discretion of taxing master*

This is an application by the defendant to review taxed costs of the plaintiff. The review arose out of an action filed by the plaintiff against the defendant for vacant possession of land owned by the plaintiff and unlawfully occupied by the defendant. The plaintiff proceeded by way of an O. 14 application and was granted order in terms of the application. The plaintiff's bill of costs was taxed by the senior assistant registrar (SAR) and in respect of getting-up, she awarded a sum of RM25,000. The defendant filed objections to such award and requested a review of such award. Having reviewed her earlier award, the SAR maintained the award of RM25,000 on the grounds that (a) there were difficult issues involved as the application took three days; (b) the case was neither 'easy' nor 'clear cut' based on the written submission and authorities cited; (c) the importance of the case to the plaintiff for having successfully exercised its right to recover vacant possession. Being dissatisfied with the decision, the defendant filed this application to the High Court.

Held:

[1] On the question of quantum, the decision of the taxing master is generally final. It must be a very exceptional case in which the court will even listen to an application to review his decision. The court will not interfere unless the taxing master is shown to have gone wholly wrong.

[2] In this case, interference was warranted as the basis of the award was ill-founded, since (i) the mere fact that a case took three days *per se* cannot form the basis in concluding that the issues must have been complex; (ii) the case was clear-cut as it is trite law that summary judgments are only given in clear-cut cases; (iii) the mere fact that the plaintiff was successful in the claim cannot form a basis for the granting of an excessive award as this would only amount to opening the "Pandora's box" to seek a high award for getting-up.

[Orders of SAR set aside; fees for getting up reduced.]

Cases referred to:
Coon v. Diamond Tread Company [1938] Ltd [1950] 2 All ER 385 ***(cit)***
Diversey (Far East) Pte Ltd v. Chai Chung Ching Chester & Ors [1993] 1 SLR 542 ***(refd)***
Re Ogilvie [1910] 244 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 14, O. 59 r. 36(1), (4), O. 59 Appendix 2 (Part I)

For the applicant - T Jayadeva; M/s Syarikat Radhakrishnan
For the respondent - Jayne Koe; M/s Cheah Teh & Su

Reported by Mariette Peters-Goh

JUDGMENT

RK Nathan J:

Facts

This is an application by the defendant to review the taxed costs of the plaintiff.

This review arose out of an action filed by the plaintiff against the defendant for vacant possession of land owned by the plaintiff and unlawfully occupied by the defendant. The plaintiff then proceeded by way of an O. 14 application (encl. 5) against the defendant. On 12 July 1996 Zaleha Zahari J granted the plaintiff an order in terms of the application.

The plaintiff's bill of costs was taxed by the learned senior assistant registrar (SAR) on 30 October 1997 and in respect of getting up she awarded a sum of RM25,000. The full taxed costs inclusive of allocatur amounted to RM28,328.

The defendant filed objections to the award of RM25,000 for getting up and requested a review of the award. It contended that this was merely a case of summary judgment and that there were no difficult nor novel issues involved. It argued that the sum awarded by the learned SAR was excessive. The plaintiff contended that all these arguments had been raised before the learned SAR on the day the bill was taxed. The plaintiff denied that it was an easy application.

Having reviewed her earlier award the learned SAR on 9 February 1998, maintained the award of RM25,000 for getting up and made no order as to costs. Being dissatisfied with the said decision, the defendant filed this application (encl. 48) pursuant to O. 59 r. 36 of the Rules of the High Court 1980 (the RHC) for a review by the judge.

Review Of SAR's Certification

Order 59 r. 36(1) of the RHC reads:

> (1) Any party who is dissatisfied with the decision of the Registrar to allow or to disallow any item in whole or in part on review under rule 34 or 35, or with the amount allowed in respect of any item by the Registrar on any such review, may apply to a judge for an order to review the taxation as to that item or part of an item, if, but only if, one of the parties to the proceedings before the Registrar requested the Registrar in accordance with rule 35(3) to state the reasons for his decision in respect of that item or part on the review.

The defendant having requested the learned SAR to state the reasons for her decision in respect of her refusal to reduce the award of RM25,000 for getting up, the learned SAR gave her reasons in writing which was undated.

Whilst I agree that an award of a sum for getting up is based on the exercise of discretion by the taxing officer and that such an exercise of discretion ought not to be interfered with by me on review, I ought to so interfere, if the reasons given warrant such interference.

Her first reason was that since the application took three days there must have been difficult issues involved. The plaintiff's case was that the defendant was a trespasser on the land. The defendant contended that he was lawfully in occupation arising out of a valid tenancy. The order granted was for vacant possession of land with damages to be assessed.

The mere fact that a case took three days *per se*, cannot form the basis for concluding that the issues must have been complex. Parties confirmed that the case in fact only took three afternoons as the learned judge had other priority cases to be heard in the mornings. Therefore on this alone, factually the learned SAR was wrong to have held that the case took three days.

Her second ground was that this was neither an easy nor a "clear cut case" for summary judgment to have been obtained, based on the written submissions and the authorities cited. Whilst agreeing that there were no novel issues raised, she however took into account the amount of time that must have been taken for the plaintiff's counsel to prepare his case.

The learned SAR's finding that this is not a "clear cut case" goes against the very precept as to when summary judgments ought to be given. It is trite law that summary judgments are only given in clear cut cases. Indeed the learned judge found it so. This fact is clearly accepted even by the defendant who has not even appealed against the said decision. There was no submission made on the amount of time spent by the plaintiff's counsel. Clearly the learned SAR fell into error in relying on these reasons for awarding a sum of RM25,000 for getting up.

Her third reason is the importance of the case to the plaintiff for having successfully exercised its right to recover vacant possession. To my mind this reason, if acceptable, would be tantamount to opening the proverbial "Pandora's box" because every successful plaintiff or defendant would use this similar argument to seek a high award for getting up, for who would not want to successfully prosecute or defend a case. The aim of the plaintiff is to succeed. The aim of the defendant is to cause a dismissal.

As to the reluctance of the courts to interfere with a taxing officer's award in respect of quantum, Wynn-Parry J in *Coon v. Diamond Tread Company (1938) Ltd* [1950] 2 All ER 385 adopted with approval the observations of Buckley LJ in *Re Ogilvie* [1910] p. 244, 245:

> On questions of quantum the decision of the taxing master is generally speaking final. It must be a very exceptional case in which the court will even listen to an application to review his decision. In questions of quantum the judge is not nearly as competent as the taxing master to say what is the proper amount to be allowed; the court will not interfere unless the taxing master is shown to have gone wholly wrong. If a question of principle is involved it is different; on a mere question of quantum in the absence of particular circumstances the decision of the taxing master is conclusive.

Again in *Diversey (Far East) Pte Ltd v. Chai Chung Ching Chester & Ors* [1993] 1 SLR 542 the Court of Appeal of Singapore accepted the principle that a judge must not interfere with the discretion of a taxing officer on a mere question of quantum unless very exceptional circumstances are present.

In the absence of any directions from me, the defendant is limited to the arguments that had been raised during the review before the learned SAR in accordance with O. 59 r. 36(4) of the RHC.

The defendant raised the argument that since the judgment obtained by the plaintiff was under O. 14, paragraph 1 of O. 59 Appendix 2 (Part I) ought to apply and that the costs to be allowed under such circumstances should be RM350. The said para. 1 reads as follows:

> ... the scale of costs set out in Part II of this Appendix shall apply in relation to the following cases if the writ of summons therein was issued and indorsed in accordance with Order 6 rule 2(1)(b), with a claim for a debt or liquidated demand, that is to say:
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> ...
>
> (c) cases in which the plaintiff obtains judgment under Order 14 either unconditionally or unless that sum is paid into court or to the plaintiff's solicitors.

Part II reads as follows:

> Costs to be allowed in cases under the following sub-paragraphs of paragraph 1 of this Appendix:
>
> ... ... (c)
>
> RM350.00

It is my judgment that paragraph 1 is only applicable in cases in which the plaintiff obtains judgment under O. 14 for a claim for a **debt or liquidated demand** (emphasis provided). The plaintiff before me is claiming for vacant possession of the land and damages to be assessed. This is clearly an unliquidated demand.

Having taken all factors into consideration, I am of the view that this case is one wherein I ought to interfere in the award of quantum ordered by the learned SAR on the basis of excessiveness based on ill-founded reasons. I therefore set aside the orders of the SAR dated 30 October 1997 and 9 February 1998 and instead award RM12,000 as fees for getting up, with costs to the defendant.